

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 10, 2005 at 8 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jesse Laslovich (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 285, HB 366, HB 363, HB 409, HB
349, HB 420, HB 324, 3/3/2005
Executive Action: None.

HEARING ON HB 285**Opening Statement by Sponsor:**

REP. JANNA TAYLOR (R), HD 11, DAYTON, opened the hearing on **HB 285**, a bill that would allow domestic violence victims to establish a substitute address and route mail and documents through the Attorney General's office. She said that 16 states have statutes authorizing address confidentiality services.

Proponents' Testimony:

Kate Cholewa, Montana Coalition on Domestic and Sexual Violence (MCDSV), said that a substitute address enables state and local agencies to respond to public-records requests without disclosing the location of victims. One of the reasons for doing this is to protect the voting rights of victims; this will allow them to stay off registered-voter lists. She noted that Kelson Young, Public Outreach Coordinator, MCDSV, has also come to this hearing and is available for questions.

Pam Bucy, Assistant Attorney General, said that currently the Department of Justice has an Office of Victim Services that works with county attorneys and victims of crime to ensure that their medical expenses and the costs associated with being a victim of a crime are dealt with. They believe they can absorb that into their current duties with a minimal amount of expense.

Beta Lovitt, Board of Friendship Center, said it is important to do everything possible to protect victims of domestic violence.

Gary Marbut, President, Montana Shooting Sports Association, and a certified firearms instructor, said he trains people in personal protection. This bill would set up an opportunity that is consistent with protection strategies that he teaches.

Kathy Matthew-Jenkins, Missoula, said this is a great idea to help these people stay away from their abusers.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8.5}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked what the cost was in Washington State. **REP. TAYLOR** said they have been doing this for 14 years, their costs

are \$77/person, and there are 2,667 people enrolled. Some are a family, there are not that many separate mail reroutes.

SEN. CROMLEY asked what the cost was in Nevada. **REP. TAYLOR** said their total cost is \$11,000 for 250 people. The whole program for Montana would cost about \$4,000.

Closing by Sponsor:

REP. TAYLOR said there is no potential liability; all this does is reroute mail and give a substitute address. It does not ensure safety, but it could save a life. She said that **SEN. COCCHIARELLA** will carry the bill.

HEARING ON HB 366

{Tape: 1; Side: A; Approx. Time Counter: 11.6}

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on **HB 366**, a bill that would exempt firearms, firearm accessories, or ammunition manufactured and retained in Montana from the Federal constitutional commerce clause.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 17.7}

Proponents' Testimony:

Gary Marbut, President, Montana Shooting Sports Association, spoke in favor of the bill and explained the history of how Congress has asserted authority under the commerce clause. He said that it would be good for Montana to have these "home grown industries" where people could make firearms suitable for the Montana market, but there is a question about the extent of the authority of the commerce clause. It is a matter of constitutional law that anyone that wants to benefit from that right must do so assertively. This bill claims that right under the 10th Amendment, the 2nd Amendment, and the Montana Constitution to allow people in Montana who wish to manufacture firearms for the Montana market to do so. Product can be easily identified because it will be stamped "Made in Montana".

Doug Nulle, Retired Attorney, Clancy, said this bill defines an activity that is intrastate, fully complies with a recent Federal decision and will withstand challenges. It is a good bill and it is good for the local economy.

Jonathan Martin, Constitution Party of Montana, said that at a time when the lines between Federal and State powers have become blurred, it is refreshing to see a bill that will do a lot to stimulate business in Montana and will redefine the issues.

Candy Matthew-Jenkins, Missoula, said she has been the business-owner of a Made in Montana Store for 13 years where they sold everything from food products to furniture, and it is refreshing to see products made in Montana being promoted. She stated that a product like this is a definite asset to the state.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked about an earlier reference to a court case. **Mr. Nulle** stated that case was numbered 348 Fed 3rd 1132 from the 9th Circuit Court. The case holds that Congress could not prohibit possession of homemade machine guns under its commerce clause power.

CHAIRMAN WHEAT asked if there was a problem they were trying to solve beyond making sure that State's rights were not violated. **REP. KOOPMAN** said that over the years Federal regulations have tortured the commerce clause until it extends Federal regulations to a point where it does violate our constitutional rights. This bill will test that and see if this is the limit of Federal authority.

CHAIRMAN WHEAT asked if this will expand beyond the manufacture of firearms to other things. **REP. KOOPMAN** said the potential is there and the principle that could be established with this test will extend to other products that are manufactured in Montana.

CHAIRMAN WHEAT asked if it was an expectation that a lawsuit will be forthcoming because of the challenge that is being set up to see whether it is the Federal government or the State government that has the authority. **REP. KOOPMAN** said at some point that will happen.

CHAIRMAN WHEAT commented on frivolous lawsuits and asked whether there might be a frivolous lawsuit or a legitimate lawsuit. **REP. KOOPMAN** said it would not be frivolous.

{Tape: 1; Side: A; Approx. Time Counter: 17.7 - 28}

SEN. CROMLEY asked if current law allows the manufacture of a firearm in Montana. **REP. KOOPMAN** said that Montanans have as much right as any American to open up a business, and this bill asserts that Montana is saying that if you manufacture it in Montana and keep it in Montana, it is subject to state and local law, but would not be subject to Federal regulation.

SEN. CROMLEY said the law allows manufacture of a gun, but in Section 5 it says this doesn't apply to a gun more than 1 1/2 inches in diameter. He asked if that is still okay with the Federal government, as well as manufacturing automatic weapons. He also asked, "If we can do this now, why can't we do it with everything, and why isn't it all unregulated"? **REP. KOOPMAN** said that language in this bill only relates to what we are asserting in Montana, it doesn't in any way erode our rights under the Federal or State Constitutions concerning firearms. The purpose of this bill is to expand those rights.

SEN. CURTISS expressed concern about challenges and litigation, and asked for comment as to what might occur with the passage of this legislation. **Mr. Marbut** said that there has been a lot of Congressional authority asserted under the guise of the commerce clause and there seems to be more authority than is granted under the Federal Constitution. All the states could probably be doing more internal commercial activity than what is currently allowed.

SEN. CURTISS talked about unfunded mandates and said an earlier bill has been ignored because it wasn't followed through by the governor's office. It also directed the Attorney General's office to prosecute and stand up to the Federal government relative to those impacts on the state. She said passage of this bill offers a possibility for some challenges. **Mr. Marbut** said this bill is a permissive activity; to open a door of activity.

SEN. MANGAN referred to New Section 6, marking of firearms, asked whether accessories would also be marked, and whether that would be considered a friendly amendment. **REP. KOOPMAN** said that he would have no objection, but there is a practical challenge depending upon the size of the accessory.

SEN. SHOCKLEY asked about the size restriction of 1 1/2 inches: Page 3, Line 13. **Mr. Marbut** said that is to accommodate ten-gauge, eight-gauge, and six-gauge shotguns.

SEN. SHOCKLEY asked if anyone made ammunition for anything bigger than a ten-gauge. **Mr. Marbut** said the people who shoot six-gauge and eight-gauge shotguns are reloading their own ammunition. He was not aware of a commercial manufacturer.

SEN. MOSS asked whether anyone has spoken to representatives of the Big Timber companies that manufacture reproduction firearms to get feedback about this legislation. **REP. KOOPMAN** said this bill would not affect them because they market their products nationally and internationally.

SEN. MOSS asked about safety inspections. **REP. KOOPMAN** said that would fall under State regulation rather than Federal.

SEN. CURTISS noted that Section 5, Subsection 2, says "no black powder"; and asked if black powder guns are excluded from this bill. **Mr. Marbut** said their purpose is to exclude all black powder guns from this bill because the Federal government currently considers them to be curios and relics and they are not regulated as firearms. He stated that included those with bores over 1 1/2 inches, and they do not need the protection suggested in this legislation.

Closing by Sponsor:

REP. KOOPMAN stated he had no objection to reducing the bore diameter down to one inch. He said this is an economic development bill and it opens the door to special opportunities for Montanans making firearms for other Montanans. It expresses Montanan's desire to have their constitutional rights under the 10th Amendment clearly defined and be able to move forward in this area. He said he is open to having **SEN. SHOCKLEY** or anyone on the Committee carry the bill.

HEARING ON HB 363

{Tape: 1; Side: B; Approx. Time Counter: 15.4}

Opening Statement by Sponsor:

REP. EMELIE EATON (D), HD 58, LAUREL, opened the hearing on **HB 363**, a bill that would revise misdemeanor assault with bodily fluid to include healthcare workers and emergency responders to the list of those protected under the provisions of the crime.

Proponents' Testimony:

Kathleen Doughty, Montana Nurses Association, read written testimony.

EXHIBIT(jus53a01)

Steve Gibson, Youth Services Administrator, Department of Corrections, voiced support of the bill.

Pat Clinch, Montana State Council of Professional Firefighters, noted Line 15 relates to a law enforcement officer being assaulted and said firefighters and Emergency Medical Technicians should have the same protection and have the same charge made against someone as a law enforcement officer would have.

Jim Smith, Montana Sheriffs and Peace Officers Association, asked for favorable consideration of the bill. This legislation takes on added importance when talking about Hepatitis and other fluid-born diseases.

Beta Lovett, Montana Medical Association, said this is a real risk and asked the committee to take that into consideration in the passage of this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE stated he had seen a similar bill, SB 172, that added emergency responders to the list of people against whom bodily fluids could not be thrown and asked if anyone had spoken to that bill's sponsor. **REP. EATON** said this bill is an attempt to include some people that need to be in this and all attempts to amend it have been resisted although she agreed with a lot of the people that need to be included. She wanted to keep it short and to the point.

SEN. MCGEE referred to the title of the bill and asked where "mental state element" is mentioned in the bill. **REP. EATON** said that was done in Legal Services and she asked them why the change was made. They said if they do not change the "mental state", that anyone who is bleeding and accidentally splashing someone else with blood, will be included in this crime of assault with a bodily fluid. This would include people who unknowingly do that.

SEN. MCGEE referred to SB 172 and said it included "an emergency responder" and defined that, as a licensed medical services provider, law enforcement officer, fire fighter, volunteer fire fighter, etc., that renders aid at a crime scene or the scene of an emergency or accident. He questioned the language in HB 363 that talks about a health care provider performing emergency services, and said that may cover the same thing. He asked whether there would be an objection if this committee decides it

would be best to look at the "emergency responder" situation and want to amend language to include that. **REP. EATON** said that she would not object.

Closing by Sponsor:

REP. EATON closed and said this bill is a request to extend the list of those protected to include the people who are most at risk of being purposely assaulted with a bodily fluid.

HEARING ON HB 409

{Tape: 1; Side: B; Approx. Time Counter: 27}

Opening Statement by Sponsor:

REP. GEORGE GOLIE (D), HD 20, GREAT FALLS, opened the hearing on **HB 409**, a bill to revise the sample criteria for workforce drug and alcohol testing. The bill would allow non-federally mandated employers who have a qualified testing program an option to the existing limitation of urine testing. The new option is oral testing: a saliva test.

Proponents' Testimony:

Ronna Alexander, Orasure Technologies, said the Intercept Oral Fluid Drug Screening test is the leader in oral fluid diagnostics. She explained that Page 2, Section 2, Lines 15-16, must conform to CFR Part 40 which is the regulatory framework for the Department of Transportation. This is the model that the state wanted to follow when they adopted their drug testing standards. 49 CFR is written strictly to urine testing, so if this option is going to be allowed, oral fluid testing has to be added into the definitions.

She said that 46 states have added oral fluid testing in their workplace standards because it allows for easy collection in any setting, minimizes the risk of tampering, is non-hazardous, and is more effective in detecting and deterring drug abuse. She passed around information that explains the program in detail. She stated that oral testing reflects recent drug use; urine testing can only tell that a drug was present in someone's body at a certain point in time. Traces of drugs can linger for several days with urine testing, and that would cloud the picture for a workplace accident investigation.

She noted that employers falling under 49 CFR, the transportation sector, won't be able to use the test until the Federal

Department of Transportation approves the test themselves. She stated that the Mining Association also supports the bill.

EXHIBIT(jus53a02)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 10.6}

Margaret Morgan, Treasure State Electrical Contractors, said they have attended national meetings and seminars on oral drug testing and are very interested in being able to apply that for those that have approved drug testing programs in their policy. Oral drug testing is very reliable, easy to administer, and less intrusive on the employee.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked how this will work for people who inject methamphetamine or heroin into their arms. **REP. GOLIE** said this will be a more accurate test than the urine sample.

SEN. MCGEE asked if drugs taken intravenously show up in saliva. **REP. GOLIE** said that they do show up.

Closing by Sponsor:

REP. GOLIE explained that they do random urine sample testing at his place of work and told how that happens. He said if he is in an accident at work he is automatically tested, it isn't just a random test. This legislation will have no effect on Federally-mandated employers such as trucking companies, state highway or county road departments until the Department of Transportation accepts this test. Non-mandated companies are mines and construction companies. He said employees want a safe workplace, this is less intrusive for the employee, and it is better for the employer. **SEN. MANGAN** will sponsor the bill on the floor.

HEARING ON HB 349

{Tape: 2; Side: A; Approx. Time Counter: 17.5}

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, ROUNDUP, opened the hearing on **HB 349**, a bill to revise the responsibility of law enforcement

officers for intoxicated persons. The options for intoxicated and incapacitated persons are different, and the options for incapacitated persons are not practical solutions. Some communities do not have the proper facilities, and most hospitals will not admit a person incapacitated by alcohol unless they have other physical injuries. Current law also requires a police officer to make a medical diagnosis, which they are not qualified to make, and imposes liability on the officers if they make an incorrect diagnosis. The bill has the support of the Attorney General, the Montana Association of Chiefs of Police and other law enforcement agencies from around the state.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, Department of Justice, explained the history of the bill and said that the only detoxification center in the state is in Billings. She said this is an example of failed public policy, and law enforcement people need some guidance and some options for this problem.

{Tape: 2; Side: A; Approx. Time Counter: 17.5 - 26.9}

Bob Worthington, Administrator, Montana Municipal Insurance Authority, noted the immunity portion puts in a standard that the officers have acted in good faith. He asked for support.

Charles Harball, City Attorney, City of Kalispell, said he is often approached by officers looking for reassurance in these situations and how to exercise their best judgment. He said the jails are full and the emergency room will just release the person. The officers are looking for a common-sense approach which would allow the courts to examine the situation and be able to determine whether good faith was exercised. Officers shouldn't be held under strict liability.

Tim Shanks, Captain, Great Falls Police Department and City of Great Falls, said their options are limited since they are not equipped to handle these people. He stated that this bill will give more options and he asked for support.

Bill Dove, Montana Police Protective Association, said this will help make a police officer's job easier. This is a universal problem across the state.

Mark Tymrak, Past President, Montana Association of Chiefs of Police, and Director of Public Safety, City of Bozeman, said this is an everyday occurrence and jail is not the appropriate place to take them. They have a special arrangement with the hospital, but a private security person has to remain with the person taken

into protective custody and in the past he has had to budget \$10,000 for that security. This year's budget is \$23,000.

Marty Ludeman, Uniform Patrol Captain, City of Missoula, urged support of the bill. He said that the incapacitation issue in Missoula doesn't rise to the level of many communities, but they fight with that issue when the person becomes combative at the hospital or they can't be controlled anymore. He said if the person refuses treatment, they can't be forced to seek medical aid and officers feel they have a duty of care.

Jim Smith, Montana Sheriffs and Peace Officers, and Montana County Attorneys Association, stated support for the bill. He said that applying the subtle distinction between incapacitation and intoxication is not easy to do out on the streets and is primary in this bill. Immunity for the officers is secondary.

Gordon Morris, Executive Director, Montana Association of Counties (MACO), asked to have his support expressed at the hearing. Mr. Smith brought the message for him.

{Tape: 2; Side: B; Approx. Time Counter: 6 - 18.7}

Opponents' Testimony:

Jed Fitch, Montana Trial Lawyers Association, said that making the distinction between incapacitation and intoxication should be addressed, but they don't agree with giving immunity. He addressed earlier testimony and said the statute requires the officer to take the person to an emergency medical service customarily used for incapacitated persons. Detoxification facilities don't exist, so that is why the statute doesn't work for the police officers. He did not feel the problem is as big in the legal field as has been described.

He said he researched all the cases the Supreme Court has heard on this statute in the 31 years it has been on the books. He gave details on the cases and said that is why immunity should not be in the statute. He said it should be up to the jury to try the case. Two cases were in 1974: Azure vs City of Billings, and Solberg vs Yellowstone County; the third case was Nelson vs City of Butte in 1995. He said the police officer is not liable under current law, but his state or municipal employer is.

He stated that when an officer acts in good faith and a citizen is hurt or killed due to negligence, they have a right to have their case heard in court and he felt this bill will take away that right.

{Tape: 2; Side: B; Approx. Time Counter: 18.7 - 30}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked if it was the opponent's position that the police should detain more citizens and spend more time watching drunks instead of being out on patrol. **Mr. Fitch** said it was not. **SEN. SHOCKLEY** asked for clarification. **Mr. Fitch** said people can't be detained or arrested if it is not an illegal act. They can be taken into protective custody when the person is unable to act rationally. The legislature has created a duty for the police to protect incapacitated people. A situation should not be created where the police have no duty towards incapacitated or intoxicated people on the street. **SEN. SHOCKLEY** said the police always have a duty to protect the citizens, but he did not feel they should be punished. He asked why they can't be protected when they make a good faith mistake. **Mr. Fitch** did not feel they should be punished. The facts in each instance are important and should be flushed out and heard to determine whether it was a good faith act. If they are arrested without any reason and the person is a diabetic rather than a drunk, that person has a right to determine whether it was a good faith act or an oversight by the police and that citizen was harmed by it.

SEN. PERRY referred to Page 1, Line 30, and asked what the definition of "health facility" is in code. **Ms. Bucy** said it is not defined in this statute, and would be any regularly accepted meaning; any hospital or clinic in a community.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 6}

SEN. PERRY asked whether the word "care" could be added to insure the locations are clearly defined. **REP. OLSON** said that was okay.

SEN. CROMLEY asked if the standard were "good faith", wouldn't the jury be able to decide whether the officer had acted in good faith in their treatment of this detainee. **Mr. Fitch** said, "If the standard were "good faith", which is a standard that is not currently defined, yes, the jury would undoubtedly deserve the right to hear it. But when you say 'immunity' it puts the burden of proving whether or not that act was good faith on the person who was injured. He said that the person who caused the injury should have to make more than an act in good faith." He stated that this kind of amendment invites future litigation. He challenged anyone to say what "good faith" means in an actual sense when all the facts are not known. He felt that every case would have to be reargued.

SEN. CROMLEY referred to Page 2, Subparagraph 2 and asked why those three things were taken out as he would like them left in. **Ms. Bucy** answered that language was stricken because it refers to the incapacitated person. She wouldn't be opposed to putting some of that in the first section. The intent was to remove the distinction between incapacitated person and intoxicated person, have the options available, and not use the mandatory language. Leaving those elements in would not be a problem if the committee chose to do that.

SEN. O'NEIL referred to language that was removed that if the person consents to an offer for help this person would be forced into an ambulance and forced to go to the hospital, and they would be responsible for \$200-\$400 services. He asked if that was the intent and whether it was fair. **REP. OLSON** said, "I don't think that is the intent behind this, but I do believe if someone refuses medical services, how can the services be forced upon them"? The provision still exists on Page 1, Line 29, that if someone wants to refuse medical services, the officer may assist.

Closing by Sponsor:

REP. OLSON closed and asked for support of his bill. He noted from personal experience that in small towns there is only one officer on duty from 5PM to 7AM. He asked **SEN. MANGAN** to carry the bill in the Senate.

HEARING ON HB 420

{Tape: 3; Side: A; Approx. Time Counter: 18.3}

Opening Statement by Sponsor:

REP. PAT WAGMAN, HD 62, LIVINGSTON, opened the hearing on **HB 420**, a bill requiring that a reason be given for denying custody of an abused child to an extended family member. Proposed amendments were passed around.

EXHIBIT(jus53a03)

Proponents' Testimony:

Harris Himes, Montana Family Coalition, stated support.

Betty Jenkins, Missoula, said many times it is the case worker's opinion that a family member should not have the children. She passed around "Child Protective Services and the Juvenile Justice

System" a pamphlet with information about Supreme Court decisions and case law that preserves family rights.

EXHIBIT(jus53a04)

Dallas Erickson, Self, expressed support for the bill.

Claudia Martz, Self, gave her personal story. She said she had legal guardianship of her grandchildren for 18 months, but one week after guardianship was lifted, the children were removed from her care by the Department of Family Services. She urged support of the bill.

Rachel Roberts, Montana Family Foundation, stated support.

Matthew Gerawan, Self, told of personal experience when he helped someone get their children back from the government and stated his support of the bill. He said the problem needs to be dealt with.

Robert Martz, Self, grandfather, said they don't take into consideration the children's well being. He said, "They are messing the kids up, too".

Opponents' Testimony:

Shirley Brown, Division Administrator, Child and Family Services, Department of Health and Human Services, said she is an opponent because the amendments change the focus of the bill and give priority to extended family members.

{Tape: 3; Side: B; Approx. Time Counter: 6 - 16}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked for information about the change in focus of the amendments. **Ms. Brown** said Section 41-3-439 currently gives priority to extended family members only if the child has been adjudicated based on the abandonment. She stated that the amendment goes beyond the title of the bill because it establishes a priority for extended family members.

SEN. MCGEE asked for further information about the change in focus. **REP. WAGMAN** said this amendment may have an unintended consequence as it was hurriedly put together and has not been edited. He did not intend to change the scope of the bill and give extended family members priority.

SEN. CROMLEY asked if "extended family" is defined in the Montana Code. **Ms. Brown** said it is not defined in the definition section of the abuse and neglect statute. The definition they work with is "Kinship" which is defined in Title 52-2-602.

Closing by Sponsor:

REP. WAGMAN said that under the code the premise is that the court will always consider the best interest of the child. When District Court Judges deal with these issues, they take the Department's recommendation to heart; they don't have the ability or the financial means to do the investigation on their own. It is in the best interests of the family that the court be given the reason why they were denied and let the judge make that decision. He noted that testimony from the Department in the Health and Human Services Committee indicated that only 25% of these children are given to extended families. If the state can get these children back with their extended family, in most cases it is better for the child and for the state.

HEARING ON HB 324

{Tape: 3; Side: B; Approx. Time Counter: 23.2}

CHAIRMAN WHEAT announced that Mr. Himes will show a 10-15 minute video after testimony has been presented.

Opening Statement by Sponsor:

REP. ROBYN DRISCOLL, HD 51, BILLINGS, opened the hearing on **HB 324**, crime of obstructing access to health care facility. She passed out "Legal Precedents for HB 324" and "Gazette Opinion". She said the bill does not limit anyone's right to free speech and was modeled after a Colorado law that prevents protestors from approaching within eight feet of people entering or exiting healthcare facilities within 100 feet of the facility and the buffer around the clinic has been changed to apply to Montana. There are currently 15 states with this buffer legislation.

[EXHIBIT\(jus53a05\)](#)

[EXHIBIT\(jus53a06\)](#)

Proponents' Testimony:

REP. GAIL GUTSCHE said that fewer than 10% of the people going to these clinics are going for abortions. People who are going for well-child screening, breast cancer, Pap smears, or other services might be subjected to protests that have nothing to do

with the reason they are seeking healthcare there. They go there because those clinics offer healthcare on a sliding-scale fee schedule. She urged consideration of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 23.2 - 30.7; Comments: Testimony continued on Tape 4 A}

Jeri Duran, Director of Public Affairs for Planned Parenthood of Montana, said that family planning represents the majority of their services. She stated that they are harassed at least once a week and shared a recent experience that occurred to a pregnant staff member on the Capitol steps. She noted that some of their most inflammatory protestors are at the Great Falls Clinic where they currently don't provide any abortion services. Planned Parenthood has had little relief with court-issued injunctions as they only provide relief from a specific person. This legislation offers long-term protection for staff and visitors to the clinic.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 7.5}

Raquel Castellanos, Executive Director, Blue Mountain Clinic, Missoula, read written testimony.

EXHIBIT(jus53a07)

{Tape: 4; Side: A; Approx. Time Counter: 7.5 - 20.2}

Kate Cholewa, NARAL Pro-Choice Montana, said there are many obstacles to getting health care and walking into the doctor's front door shouldn't be one of them.

Sara Frederickson, Volunteer, Planned Parenthood, Billings, said she is now employed there and read written testimony.

EXHIBIT(jus53a08)

{Tape: 4; Side: A; Approx. Time Counter: 20.2 - 25.5}

Cynthia Peters, Employee, Blue Mountain Clinic, Missoula, read written testimony.

EXHIBIT(jus53a09)

{Tape: 4; Side: B; Approx. Time Counter: 7.3 - 14.5}

Julie White, Laura Marx, Mindy Oppen, Seth Quackenbush and Jennifer Savage, Bernadette Kneefe, Sheryl Stassi-Lampman, and Nan Bovington presented written testimony for the record.

EXHIBIT(jus53a10)

David Jersey, Volunteer Escort, said it has been the escort's job to protect the privacy of the patients.

Brad Martin, Executive Director, Montana Democratic Party, expressed strong support of SB 324.

Opponents' Testimony:

Mary Krug, Self, voiced opposition and read written testimony.

EXHIBIT(jus53a11)

Jonathan Martin, Self, Great Falls, noted opposition to the bill and said he is one of the protestors. He presented pamphlets and other written information. He said they are handing out educational material, not obstructing; there is a Federal Freedom of Access to Clinics Act that has stiff penalties; the bill is overly broad and anyone could be arrested; passage of the bill will make it necessary to video-tape everyone that comes and goes to protect the protestors; and the bill is unconstitutional.

EXHIBIT(jus53a12)

Susan Glicko, State Coordinator, Rachel's Vineyard Retreats, stated opposition and read written testimony.

EXHIBIT(jus53a13)

{Tape: 4; Side: B; Approx. Time Counter: 14.5 - 30; Comments: Testimony continued on Tape 5 A.}

Diane Rotering, Founder, Mercy Company, Missoula, said they counsel people after abortions. She said she has been protesting at Blue Mountain Clinic for 18 months and expressed opposition because of the violation of the First Amendment. She said they are not approaching anyone, they just stand with signs.

Marilyn Hatch, Self, Lolo, sent written testimony for the record.

EXHIBIT(jus53a14)

Harris Himes, Montana Family Coalition, expressed opposition to the bill and said the entrance and exit requirements are vague. He asked how they will prove the eight-foot requirement. He asked the Committee to consider how an eight-foot bubble will stop someone from being shot or setting something on fire.

Candy Matthew-Jenkins, former Director and Counselor at Birthright of Missoula, said she worked there 3 1/2 years. She voiced opposition to the bill. She said the information these people get from the protestors is about the safety of unborn children and it is important they get that information.

Bill Krug, Self, voiced his opposition.

Mary Fox, Self, Deer Lodge, said she has been involved with Rachel's Vineyard, a post-abortive healing ministry and urged a vote against the bill. She said that sidewalk counselors are a woman's last chance to be fully informed about the ramifications of abortions.

Lynn Stumberg, Eagle Forum, said that individuals are permitted to demonstrate at churches and other public institutions without the restrictions this bill would require. They feel that hospitals and clinics should not be treated differently.

Nicole Martin, said she is one of the protestors at Great Falls and stated she only wished good for the women. She voiced her opposition to the bill and presented written testimony.

EXHIBIT(jus53a15)

Abigail Koljonen, Great Falls, asked for a "No" vote on HB 324.

Hannah Koljonen, Great Falls, presented written testimony.

EXHIBIT(jus53a16)

Jennifer Sollid, Ulm, opposed the bill because it is taking away rights.

Ursula Martin, Great Falls, voiced opposition and presented written testimony.

EXHIBIT(jus53a17)

Amanda Martin, Great Falls, presented written testimony.

EXHIBIT(jus53a18)

Rachel Roberts, Montana Family Foundation, asked the Committee to consider the precedent that will be set for other special interest groups if this bill passes.

Eric Schiedermayer, Montana Catholic Conference, expressed their opposition to the bill. He provided "Freedom of Access to Clinic Entrances Act" and other data.

[EXHIBIT\(jus53a19\)](#)

Becky Stockton, Helena, voiced opposition.

Paul Zallek, Self, Great Falls, presented a pamphlet, "Why Trust Planned Parenthood", and written testimony.

[EXHIBIT\(jus53a20\)](#)

[EXHIBIT\(jus53a21\)](#)

Dallas Erickson, Montana Family Coalition, asked the Committee to vote "No" on the bill. He presented written testimony.

[EXHIBIT\(jus53a22\)](#)

William Wise, M.D., Self, sent written testimony in opposition.

[EXHIBIT\(jus53a23\)](#)

Informational Testimony:

*Note: At this time **CHAIRMAN WHEAT** asked Harris Himes to show his video.*

[EXHIBIT\(jus53a24\)](#)

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. DRISCOLL said this bill has to do with safety and protection. She said there is a Federal act in effect that is not specific, also they have a hard time getting local authorities in Missoula to enforce the Federal act. She said this bill will protect everyone as it strikes a balance. She asked that the bill be passed. **SEN. SHOCKLEY** will carry the bill.

With no further business, **CHAIRMAN WHEAT** adjourned the meeting.

{Tape: 5; Side: A; Approx. Time Counter: 0 - 18.9}

ADJOURNMENT

Adjournment: 12:04 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

LINDA KEIM, Transcriber

MW//mp/lk

Additional Exhibits:

EXHIBIT ([jus53aad0.TIF](#))